OVERVIEW

Pursuant to the Act, before making any determination that an Ameritech application to provide in-region interLATA services should be denied or approved, the Federal Communications Commission ("FCC") shall consult the Commission to verify whether the requirements of Section 271(c) have been met.[2] Section 271 of the Telecommunications Act of 1996, provides the mechanism by which the Bell Operating Companies (BOCs) such as Ameritech may apply for authorization to provide interLATA service originating in the states in their regions. Subsection 271(d)(3) of the Act sets forth the three-part substantive test that the Federal Communications Commission (FCC) must apply:

> The Commission shall not approve the authorization requested in an application . . . unless it finds that --
>
> (A) the BOC has met the requirements of (c)(1) and
>
> (I) with respect to access and interconnection provided pursuant to subsection (c)(1)(A), has fully implemented the competitive checklist in subsection (c)(2)(B); or
>
> (ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B), such statement offers all of the items included in the competitive checklist;
>
> (B) the authorization will be carried out in accordance with the separate affiliate requirements of section 272; and
>
> (C) the requested authorization is consistent with the public interest, convenience, and necessity.

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2 See Section 271(d)(2)(B).

3 Pub. L. No. 104-104, 110 Stat. 56 (to be codified at 47 U.S.C. §§ 151 et seq.).

Two fundamental facts underlie the telephony portions of the Act: local exchange markets are monopolies; the long distance market is competitive. The principal purposes of the Act, accordingly, are to bring competition to the local markets while preserving existing competition in the long distance market. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, at ¶ 3, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996) (noting third goal of preserving universal service) (hereinafter "Order"), pet. for review filed sub nom. Iowa Util. Board v. FCC, Nos. 96-3221 and consolidated cases). Section 271 furthers the underlying statutory goal of providing to all consumers the benefits of competition in the form of lower prices, improved quality, and innovative services.

Ameritech's entry into the long-distance market is inextricably tied to the development of local competition. Ameritech itself argues that the promise of in-region entry into the interLATA market serves as an incentive for them to enter into, and fully implement, access and interconnection agreements with new competitors in their local markets.[4] Ameritech's view of section 271 as a form of incentive regulation that induces them to open their monopolies to competition is shared by members of Congress. As stated by Representative Bliley, the principal sponsor of the House bill, "the key to this bill is the creation of an incentive for the current monopolies to open their markets to competition." 141 Cong. Rec. H8282 (daily ed. Aug. 2, 1995) (statement of Rep. Bliley). The Commission has taken a realistic view of the counter-incentives, noting the inequality of bargaining power and the ability and incentive of incumbent local exchange carriers (LECs) "to discourage entry and robust competition" in local markets. Order

[4] See, e.g., Ameritech Reply Comments in CC Docket No. 96-98, at 7.

¶ 10. Nevertheless, to the extent that the prospect of future entry into the interexchange market serves as an incentive for BOCs to comply with the provisions of the Act opening up markets to local competition, granting 271 applications effectively eliminates that incentive. Premature entry into the long-distance market would therefore harm both local and long-distance competition.

At least equally important, the pre-entry conditions of section 271 ensure that BOCs will not be permitted to provide long distance service while their current incentive and ability to discriminate against their long-distance competitors remain intact. After all, BOC entry under section 271 serves the public interest only insofar as it promotes even more long-distance competition, not if it undermines the substantial competition that already exists. As Senator Dorgan, a member of the Senate Commerce Committee, explained, "The fact is that the long distance market is a truly competitive market. We risk damaging that competitive market if the RBOCs are permitted to enter the long distance market prematurely." 141 Cong. Rec. S8464 (June 15, 1995).

The structure of the Act demonstrates that actual, effective competition in local markets, not the mere potential for competition, must be present before an in-region long distance application can be granted. Congress clearly believed that it was not possible to let the BOCs enter the interexchange market now without harming the public interest. Under current competitive and regulatory conditions, the control exercised by the Bell operating companies over bottleneck local telephone facilities gives them the ability to frustrate competition if they were allowed to provide interexchange services today. That is why the pre-conditions for in-region entry in section 271 exist and prohibit the BOCs from currently providing interexchange services directly or through an affiliate. If Congress had intended to open all markets to the BOCs immediately, it would have authorized immediate entry into in-region as well as out-of-region long-distance services.

Although delay of in-region entry until Ameritech fully implements the competitive checklist is intended to give it an incentive to cooperate with would-be local competitors, entry is not automatic when this condition is satisfied. Ameritech's cooperation is a necessary but not sufficient condition. Full implementation of the competitive checklist will facilitate the development of local competition, but it does not guarantee that it will take root, much less flourish overnight. Given the enormous advantages of long-time incumbency and the tremendous obstacles facing competitive LECs (CLECs), interconnection, access, and resale consistent with the requirements of sections 251 and 271 will not by themselves ensure that local competition will be achieved in Michigan and that Ameritech's local monopolies will be broken. Congress therefore included a facilities-based competition test in section 271(c)(1)(A) and a public interest test in section 271(d)((3)(C) that must be given meaning.

The overall design of sections 271 and 272 make clear that regulation is not, and may not be treated as, a substitute for effective competition in preventing bottleneck abuse. If Congress had concluded that regulation by itself could ensure that BOCs like would treat unaffiliated interexchange carriers fairly and cooperatively while their bottleneck power remains undiminished, it would have allowed them to provide interexchange service simply subject to the non-discrimination and complementary structural safeguards of section 272. Regulatory safeguards can play a significant role in controlling and remedying abuse of any residual bottleneck power the BOCs may have after they enter the interexchange market, and regulators can and should enforce them aggressively. But Congress understood that the BOCs can abuse their local monopoly power to discriminate against competitors and to cross-subsidize their competitive services in ways that regulators cannot effectively control. The only truly effective check on anticompetitive BOC conduct is local competition. As a result, BOC entry is barred unless and until the Commission finds not only that a BOC will comply with section 272, but also that significant competitive changes in local markets have occurred.

For these reasons, the Act mandates a sequence of marketplace events: first effective local competition; then BOC entry into long distance. One of the principal proponents of the Senate and conference bills stated:

> The basic thrust of the bill is clear: competition is the best regulator of the marketplace. Until that competition exists, monopoly providers of services must not be able to exploit their monopoly power to the consumer's disadvantage. . . . Telecommunications services should be deregulated after, not before, markets become competitive.

142 Cong. Rec. S688 (daily ed. Feb. 1, 1996) (statement of Sen. Hollings) (emphasis added); see 142 Cong. Rec. S697 (Feb. 1, 1996) (statement of Senator Kerrey) (only the conference bill "had sufficient provisions to ensure that the local telephone market was open to competitors before the RBOCs entered long distance"). Members of the House of Representatives shared the same intent and understanding. E.g., 142 Cong. Rec. E204 (Feb. 23, 1996) (statement of Rep. Forbes) ("[B]efore any regional Bell company enters the long-distance market, there must be competition in its local market. That is what fair competition is all about."); 141 Cong. Rec. H8458 (Aug. 4, 1995) (statement of Rep. Bunning) ("We should not allow the regional Bells into the long distance market until there is real competition in the local business and residential markets.") (emphasis added).

These two purposes -- encouragement of local competition, and protection of long-distance competition -- reinforce each other, producing one inescapable conclusion: the BOCs must not be allowed into the interLATA market until local competition has developed sufficiently to ensure that withdrawal of the BOCs' single incentive to cooperate will not kill nascent competition and that the local marketplace acts as a meaningful check on the BOCs' bottleneck power. Properly implemented, the Act will realize the best of all worlds in telecommunications: rigorous competition in local and long distance markets. Conversely, precipitous approval of 271 applications would ensure the worst of all worlds: continued monopolization of the local markets combined with the destruction of existing long distance competition.

THE COMPETITIVE CHECKLIST

In function and basic application, paragraph (c)(2) of Section 271 is clear. It requires the FCC to determine whether Ameritech's qualifying agreements under Track A satisfy all of the elements of the 14-point competitive checklist. It is not enough that interconnection and access are available from the Ameritech in theory. They must be practically available in adequate quantities, and through automated systems that permit efficient ordering, installation, and billing. Section 271(c)(2)(B) requires that access and interconnection be "generally offered," and section 271(d)(3)(A)(I) requires that the checklist be "fully implemented." Unless a facilities-based competitor can actually purchase what it needs, this requirement of full implementation is not met. If a competitor's order is met with an Ameritech claim of inadequate capacity or inadequate systems to process the order, Ameritech has not generally offered access or interconnection, and has not fully implemented the checklist. As the Conference Committee stated, competing facilities-based carriers must be "operational." H.R. Rep. No. 458, 104th Cong., 2d Sess. 148 (1996).

In order to have "fully implemented" the competitive checklist, Section 271(d)(3)(A)(I) requires that there be something more than simply an agreement. Before this Commission can certify that the competitive checklist has been fully implemented, this Commission must conclude that the systems necessary to make effective use of these items are fully operational. For example, it is not sufficient that an interconnection agreement is in place that provides recurring rates for unbundled loops. Ameritech must demonstrate that it has systems in place under which purchasers of those unbundled loops could effectively and efficiently *order* those loops. Ameritech Michigan must demonstrate that it is able to *provision* the loops in a timely manner and in quantities sufficient to sustain competition. In addition, effective and efficient *billing mechanisms* must be in place. Lastly, of course, the *quality* of such provisioning must be at least equal to that which Ameritech Michigan provides itself. In sum, Ameritech Michigan must demonstrate and this Commission must conclude that the provisions of the checklist are operational in practice, and not merely in the testing stage, or worse yet, non-existent.

Based on Ameritech Michigan's filing in this proceeding, it is clear that its operation support sytstems are not fully tested and operational in the marketplace. Although Ameritech Michigan claims that it has performed internal testing of its operation support systems, this is not enough. The only way to evaluate these systems is through use in the marketplace, not through testing by Ameritech Michigan. Moreover, the one area where it appears that its operations support systems have been tested, i.e., the ordering for resale, it appears that the testing has been fraught with errors.[5] There has been very little if any testing or use of the operations support systems for ordering unbundled network elements. Attached to this Response as Attachment A is the testimony of Mr.

[5] See Rogers Testimony from Illinois Commerce Commission Docket No. 96-0404, Ameritech Illinois Exh. 9.0 (included in Ameritech Michigan's submission in this proceeding).

Jake Jennings of the Illinois Commerce Commission Staff who discusses the deficiencies in the evidence Ameritech has presented on this very issue in Illinois. Ameritech Michigan has offered the same evidence in this proceeding. Thus, the bottom line is that Ameritech Michigan has simply not demonstrated that these systems, which are absolutely critical to the development of effective competition, are fully tested and operational in the marketplace in Michigan. For this reason alone, Ameritech Michigan cannot be found to have implemented that competitive checklist. As will be discussed further below, however, Ameritech Michigan fails to satisfy the competitive checklist in other important respects.

Responses to Attachment B

1. Interconnection

b. What is the pricing methodology used for such interconnection?

<u>MCI RESPONSE</u>

Ameritech Michigan states in its submission to the Commission that the methodology used for pricing interconnection services in the AT&T Agreement (on an interim basis) was "approved" in the Commission's November 26, 1996 order in Case Nos. U-11151 and U-11152. As the Commission well knows, however, it approved only interim rates, subject to the establishment of final rates in a follow-up proceeding. Moreover, the Commission in its order adopting these interim rates concluded that the underlying cost studies still contained flaws.[6] Thus, the Commission cannot reach any other conclusion but that the interim rates do not meet the pricing standard in Section

[6] Case Nos. U-11155, 11156, Order dated December 12, 1996, p. 7.

252(d)(1) of the Act and the FCC's rules.[7]

The discussion that follows will address a number of flaws in the studies which MCI has been able to identify based on an initial analysis. MCI will be analyzing Ameritech's studies further and providing additional comments to the FCC in its response to Ameritech Michigan's Section 271 application.

1. Ameritech Michigan's "allocation" of joint and common costs is not based on forward-looking methodologies, but is essentially a fully distributed methodology.

In determining its reported shared and common costs, Ameritech Michigan did not attempt to evaluate the forward-looking, economic shared and common costs. Rather, Ameritech Michigan started with a projection of its *historic* cost structure and operations and followed procedures that appear purposefully designed to allow for maximum recovery of these historic costs. The proper question to have asked is: What would the joint and common costs be for an optimally efficient wholesale firm using least cost technologies and processes? Indeed, in testimony filed in Wisconsin, Ameritech's witness on shared, joint and common costs, Mr. Broadhurst, acknowledged that such an evaluation was not even attempted. Mr. Broadhurst testified: "We did not perform an independent evaluation of the efficiency of Ameritech's operations, nor do I believe that such a evaluation was expected by the FCC based on my reading of the FCC Order." In other words, Mr. Broadhurst admits that Ameritech Michigan's shared, joint and common costs were never examined to see if they were least cost, and consistent with proper economic costing principles. Thus,

[7] Although the FCC's pricing rules have been stayed by the Eighth Circuit, MCI still believes that these rules are based on sound economic principles and fully consistent with the requirements of the Act.

Ameritech Michigan's entire premise for evaluating its alleged forward-looking, shared and common costs is fundamentally flawed in that it does not even attempt to determine what are the most efficient, least cost operations.

Because the allocation of shared, joint and common costs affect all of Ameritech's cost studies, these studies, at least in this regard, are more like a hybrid of traditional fully distributed (embedded) cost studies and TELRIC studies. The end result are costs that not economic costs.

2. Ameritech Michigan's cost studies ignore the FCC's directive that joint and common costs associated with retail operations may not be included in the TELRICs for unbundled elements.

The FCC's First Report and Order at Paragraph 682 found that:

> under a TELRIC methodology, incumbent LECs' prices for interconnection and unbundled network elements shall recover the forward-looking costs directly attributable to the specific element, as well as a reasonable allocation of forward looking common costs.

The FCC then went on to note in Paragraph 691 of its Order that,

> retailing costs, such as marketing or consumer billing costs associated with retail services, are not attributable to the production of network elements that are offered to interconnecting carriers and *must not be included* in the forward-looking direct cost of an element. (Emphasis added.)

In these two paragraphs, and elsewhere in its First Report and Order, the FCC clearly establishes a paradigm in which costs are to be determined separately for the incumbent LECs' wholesale operations (which supply unbundled elements and interconnection services to CLECs and its own retail operations) and the incumbent LECs' retail operations (which compete for end users with the CLECs). Furthermore, the FCC found that the "relevant costs *do not include* billing, marketing, and other costs attributable to the provision of retail service." (Emphasis added.) (First Report and Order, ¶ 694) Most importantly, the FCC found that the costs attributable to the provision of retail service -- which should be excluded from the TELRICs of unbundled elements and interconnection services -- are those costs identified in the *resale context* as "avoided costs." This means that the FCC's avoided cost methodology can be used to identify which costs should not be included in the joint and common costs of an efficient operation.

Based on MCI's review of Ameritech's cost studies, it appears that Ameritech Michigan may be allocating costs to its unbundled network elements and interconnection services that should instead be borne by its retail division. In proceedings before this Commission, including arbitration proceedings, Ameritech proposed discounts for various retail services that were in the single digits or low double digits. These proposed discounts, of course, were substantially below the discounts ultimately adopted for Ameritech in Michigan and elsewhere. The point, however, is that by proposing such low discounts for its retail operations -- which discounts were rejected -- it is apparent that Ameritech Michigan has under-assigned certain costs to its own retail division. And under Ameritech Michigan's methodology, there would be a corresponding over-assignment of costs to Ameritech's wholesale division, to be recovered by unbundled network elements and interconnection services through greater mark-ups for shared, joint and common costs.

In order to understand fully how the identification of avoided retail expenses in other Ameritech states affects the allocation of shared, joint and common costs in Michigan, it is important to understand how Ameritech Michigan allocates these costs in its costs studies. First, the study starts by identifying the shared, joint and common costs for four organizations: 1) Ameritech Information Industry Services; 2) Network Services; 3) Centralized Service; and 4) Corporate Headquarters. The shared, joint and common costs for these organizations are initially identified -- not on a state specific basis -- but as the totals for the five-state region. It is only in a subsequent analysis that Ameritech Michigan allocates relative proportions of these costs to individual states.

Second, Ameritech Michigan's study eliminates all costs associated with retail activities, with the remainder of these shared, joint and common costs considered to be associated with Ameritech's wholesale division. Thus, if the study fails to properly identify the costs associated with retail activities, which clearly Ameritech's avoided cost studies have done, then the total pool of remaining shared, joint and common costs to be allocated to unbundled network elements and interconnection services are larger than they should be. In simple terms, to the extent Ameritech Michigan underestimated the expenses that are properly assigned to its retail division, which clearly is the case since Ameritech's proposed retail discounts in Michigan and elsewhere have been rejected, it is overestimating the "shared and common" costs that are allocated to unbundled network elements and interconnection.

3. Ameritech Michigan's study applies a greater mark-up, on a percentage basis for shared, joint and common costs to unbundled loops in higher density zones.

It appears that Ameritech Michigan's study applies the same dollar amount mark-up to all unbundled loops. Expressed as a percentage of underlying TELRIC, however, this same dollar amount translates into different percentages, since underlying TELRIC costs vary by density zone. Thus, Ameritech Michigan assigns a greater percentage of joint and common costs to loops in higher density areas than in lower density areas. These disparate mark-ups is inconsistent with the FCC's First Report and Order and with sound public policy.

The FCC expressed a clear concern about allocations of shared, joint and common costs that would disproportionately burden network elements that new entrants need to compete against the incumbent LECs. The FCC stated:

> We conclude that forward-looking common costs shall be allocated among elements and services in a reasonable manner, consistent with the pro-competitive goals of the 1996 Act. One reasonable allocation method would be to allocate common costs using a fixed allocator, such as a percentage markup over the directly attributable forward-looking costs. (FCC First Report and Order, ¶696) (Emphasis added.)

The FCC's directives here are clear. Any allocation of shared, joint and common costs shall be reasonable and consistent with the promotion of competition. The FCC also recommends a fixed allocator, such as a fixed percentage mark-up over directly attributable costs. Ameritech's cost allocations violate all of these directives. Moreover, because competition in the near term will likely come first to the high density areas in Michigan, allocating a greater percentage of joint and common costs to the loops in these areas is anticompetitive.

4. Ameritech Michigan's Non-Recurring Charges are not least-cost and do not reflect the forward-looking technologies. In addition, the proposed non-recurring charges are based on inappropriate averaging of very different types of costs.

Ameritech's cost studies for these nonrecurring charges are fundamentally flawed in three respects:

1. The studies appear to be based largely on manual processes for taking service orders on a line-by-line basis and fail to reflect that service ordering in a wholesale environment can be accomplished by means of automated processes. Indeed, there is ample evidence that the costs of taking service orders can be brought down substantially if the process were to be automated;
2. The studies inappropriately average service ordering charges for unbundled loops with service ordering for a variety of other services. The service ordering charges, therefore, are not specific to unbundled loops; and

3. The studies include costs for items such as "machines," "coordination" and running jumpers that appear to be either excessive or duplicate other charges.

The TELRIC methodology requires that all costs for unbundled network elements and interconnection services be determined based on least-cost, forward-looking technologies. Because service ordering processes are part of offering unbundled network elements, the same cost standards should apply. Conversely, any costs studies, such as Ameritech Michigan's, that assume extensive manual processes and taking service orders on an order-by-order basis, therefore, are inconsistent with an appropriate TELRIC methodology, and should be rejected. For example, Ameritech Michigan's cost studies indicate that the costs for service ordering are substantially labor related. Clearly then, this estimate is based on manual process where operators actually type in the service order, and thus is not reflective of the costs likely to be incurred in a truly forward-looking environment.

Second, and equally important, Ameritech Michigan has inappropriately averaged its service ordering costs for unbundled loops with service ordering charges for other services and thereby dramatically increased the reported "costs" of service ordering. For example, the service ordering charge that Ameritech proposes is based on an average service ordering charge for a number of services: loops; ports; SPNP Direct; SPNP Remote; and Additional Paths. Because the service ordering costs for some of the other services are substantially higher than the reported service ordering costs for unbundled loops, for example, the average service ordering charge for the aforementioned services, including unbundled loops, is considerably higher than Ameritech Michigan's reported costs for ordering loops.

This type of averaging violates every principle of TSLRIC and TELRIC costing: if new entrants order unbundled loops but no SPNP or some other service, then they should not incur charges for costs they do not cause. Furthermore, it is unnecessary to average costs if one already has taken the step of calculating the costs on a service-by-service basis in the first place.

Other elements that comprise Ameritech Michigan's reported TELRICs for non-recurring charges are similarly flawed. Ameritech reports costs for "machines" (in the service order charge for unbundled loops) and for "coordination" (in the line connection charge) that appear substantially inflated. Also, other reported costs, such as costs for "running a jumper" appear to duplicate costs that Ameritech is attempting to recover elsewhere (in this case in the reported recurring "cross-connect" charge.

The example above are but a few of the many flaws that permeate the cost studies underlying the rates for interconnection and unbundled elements that were incorporated into the AT&T Agreement. The Commission clearly recognized this when it found that the studies are "flawed." Accordingly, the Commission cannot find, as it is required to do in order to certify compliance with the competitive checklist, that the prices for interconnection (or unbundled network elements) are consistent with the pricing standard contained in Section 251(d)(2) of the Act. The Commission therefore must reject Ameritech Michigan's assertion that its prices satisfy the competitive checklist.

2. Nondiscriminatory access to network elements.

a. What elements are offered by Ameritech Michigan or any of its affiliates operating in Michigan?

Both Congress and the FCC explicitly recognized the importance of nondiscriminatory access to directory assistance and operator services functionalities. Section 271(c)(2)(B)(vii) of the

Act requires Ameritech (and other Bell Operating Companies), as a condition for entering the in-region long distance market, to provide:

> Nondiscriminatory access to . . .
> (ii) Directory assistance services to allow the other carrier's customers to obtain numbers; and
> (iii) operator call completion services.

Today, Ameritech Michigan has not unbundled its operator services and directory assistance (OS/DA) from its total resale offering such that a reseller could route its OS/DA traffic to itself, a third party provider, or Ameritech Michigan. Moreover, Ameritech Michigan has not demonstrated that doing so is not technically feasible.

The FCC concluded at paragraph 101 of its Second Report and Order that "the term 'nondiscriminatory access' means that a LEC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing LEC") must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself."

Branding allows CLECs to provide a comparable service to Ameritech Michigan under their own name. Customers naturally expect services to be provided, serviced and maintained by their carrier of choice, regardless of whether the service is actually provided by another carrier through a resale arrangement. Customer confusion will be significantly diminished if the customer does not perceive that resold services are actually provided by another carrier. Customers would experience concern, confusion, and dissatisfaction when placing a directory assistance call or an operator service call to their provider of choice if they are greeted with the name of their old telephone company. Branding is therefore necessary for directory assistance and operator services.

The FCC's First Report and Order specifically found that "brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize customer confusion."[8] The FCC Order also found that when rebranding is not possible, the incumbent LEC should is required to comply with a reseller's request that the services be "unbranded." The FCC specifically concluded that an incumbent LEC's failure to comply with a reseller's request for branded or unbranded service is presumptively an unreasonable restriction on resale. Specifically, the FCC Order states:

> Incumbent LECs are advantaged when reseller end users are advised ~~that~~ the service is being provided by the reseller's primary competitor. We therefore conclude that where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. This presumption may be rebutted by an incumbent LEC proving to the state commission that it lacks the capability to comply with unbranding or rebranding requests. We recognize that an incumbent LEC may incur costs in complying with a request for unbranding or rebranding. Because we do not have a record on which to determine the level of fees or wholesale pricing offsets that may reasonably be assessed to recover these costs, we leave such determination to the state commissions.

Today, Ameritech Michigan cannot unbundle its operator services and directory assistance (OS/DA) from its total resale offering such that a reseller could route its OS/DA traffic to itself, a third party provider, or Ameritech Michigan. According to plan submitted by Ameritech Illinois to the Illinois Commerce Commission, Ameritech could not offer a firm date as to when it will be able to offer resellers branded and unbundled OS/DA. Ameritech estimates that traffic could begin to

[8] FCC Order, Paragraph 971.

flow in these test switches within 6 months, but this assumes that there are no requirements for additional capacity. Even then, the traffic would flow only in the four test switches and not the remaining switches in Ameritech's network.

The only conclusion that can be reached is that today Ameritech does not provide nondiscriminatory access to unbundled operator services and directory assistance and it is rather uncertain as to when Ameritech will be able to comply with this requirement. MCI believes that rebranding of OS/DA is technically feasible as at least one other BOC -- Southwestern Bell -- has agreed to provide nondiscriminatory access to OS/DA. Ameritech Michigan has failed to demonstrate that complying with this requirement is not technically feasible. Accordingly, Ameritech Michigan does not satisfy the requirements of the checklist items set forth in 271(c)(2)(B)(vii) of the Act.

6. Nondiscriminatory access to network elements (transport).

a. What elements are offered by Ameritech Michigan or any of its affiliates operating in Michigan?

<u>MCI RESPONSE</u>

Ameritech Michigan has taken the position that "common transport" is not an unbundled network element. Ameritech Michigan interprets the term "shared transport" as used in the FCC's rules to exclude "common transport" which is provided by Ameritech to carriers today. This overly restrictive interpretation of "shared transport"

Section 51.319 of the FCC's rules requires incumbent LECs to unbundle interoffice transmission facilities as follows:

(d) Interoffice Transmission Facilities.

> (1) Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.[9]

Ameritech Michigan draws a distinction between "shared" interoffice transmission facilities and what is generally known in the industry as "common" interoffice transmission facilities or "common transport." Common transport is understood in the industry to include interoffice transport that is used by more than one carrier -- including Ameritech Michigan. Shared transport, according to Ameritech Michigan's proposed language, would be a facility dedicated to a group of new entrants where collectively the new entrants pay for 100% of the dedicated facility. In other words, Ameritech Michigan is refusing to provide access to unbundled transport facilities that are shared by Ameritech Michigan to carry its traffic between wire centers owned by Ameritech Michigan and new entrants, or between wire centers owned by Ameritech Michigan. In other words, Ameritech Michigan is seeking to impose inefficiencies on CLECs.

The Staff of the Illinois Commerce Commission recognized this very point in testimony recently filed in the Illinois Commission's investigation into Ameritech's compliance with the competitive checklist.[10] Mr. Jennings testified as follows with respect to Ameritech Illinois refusal to provide common transport as an unbundled network element:

> A requirement that carriers must purchase dedicated transport to provide end to end

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[9] FCC Order, App. B §51.319(d).

[10] Supplemental Rebuttal Testimony of Jake E. Jennings, Docket No. 96-0404, January 7, 1997.

telecommunications service (i.e., use of the platform - combining ULS [unbundled local switching], unbundled loops with dedicated transport) will result in inefficient utilization of the network. The inefficient utilization of the network will occur because carriers will not find it cost effective to purchase dedicated transport from an end office to other end offices, including both adjacent end offices and those connected through an Ameritech tandem (i.e., essentially replicating Ameritech's local transport network). Instead, carriers will purchase ULS and dedicated transport to an Ameritech tandem office as mutual compensation traffic for the purpose of providing end to end service by recombining unbundled network elements. Under mutual compensation, Ameritech would then be responsible for terminating the traffic to the called party destination. Therefore, traffic that normally would be directly routed to an adjacent Ameritech end office will now be routed to Ameritech's tandem and then to the adjacent end office for completion. This unintended consequence could result in capacity exhaustion of the tandem since calls that normally would have been directly routed from one end office switch to another end office switch would be routed to the tandem.[11]

Accordingly, Ameritech does not satisfy the competitive checklist to the extent it does not provide CLECs with access to common transport on an unbundled and nondiscriminatory basis.

8. White Pages Listings:

(1) **What competing provider/entities have requested to include their customers in the listings of Ameritech Michigan or any of its affiliates?**

(2) **What competing providers/entities have their customers listed in the white pages directories of Ameritech Michigan or any of its affiliates?**

(3) **What provider/entities have chosen not to utilize inclusion of their customers in the white pages listings of Ameritech Michigan or any of its affiliates?**

MCI RESPONSE

MCI does not believe that Ameritech Michigan has satisfied its obligations to provide directory assistance and directory listing under the checklist, Section 251(b)(3) of the Act or under the FCC's rules. Ameritech Michigan's offering does not include a basic yellow page listing for the

[11] Jennings Testimony, pp. 9-10.

CLEC customers. Ameritech Michigan's offering does not include distribution of white page directories to the facilities-based customers of CLECs, or the distribution of yellow pages to any CLEC customer.

Basic yellow page listings are among the directory listings to which Ameritech is required to provide nondiscriminatory access pursuant to the "dialing parity" obligations under Section 251(b)(3). For purposes of the statute, the FCC has defined "directory listing" to include, at a minimum, the term "subscriber list information" as defined in Section 222(f)(3). Thus, "directory listing" must include "any information . . . identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications," or any combination of such information, that the LEC has had published in a directory format."[12] MCI believes that both basic yellow page listings and white page listings constitute such data, and Ameritech Michigan's failure to provide basic yellow page listings for customers of new entrants violates its duties under Section 251(b)(3) of the Act and fails to satisfy the competitive checklist, including Section 271(c)(a)(B)(xii).

11. Number Portability

a. **Does Ameritech Michigan or any of its affiliates provide number portability in Michigan?**

b. **If number portability is provided in Michigan, is it interim or true number portability?**

c. **If number portability is provided in Michigan, is it carrier, geographic, or service number portability or any combination of the three?**

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[12] FCC's Second Report and Order, Docket No. 96-98, ¶ 137, fn. 15 (quoting 47 U.S.C. § 222(f)(3)(A), (B)).

d. If interim number portability is being provided, how are the costs being recovered and what is the pricing methodology?

MCI RESPONSE

Ameritech Michigan currently offers Service Provider Number Portability (SPNP) service -- both remote call forwarding and direct inward dialing -- at rates approved by the Commission on an interim basis in the Commission's December 12, 1996 order in Case No. U-11155. As discussed above, the Commission adopted the rates established by Ameritech's latest studies even though if found those studies to be "flawed." Moreover, and according to Ameritech Michigan's submission to the Commission, collection of amounts billed for interim number portability has been deferred until the Commission establishes a methodology for recovering the costs that is competitively neutral as required under Section 252(e) of the Act and as defined by the FCC in its Second Report and Order. The Commission will establish such a cost recovery mechanism in its costing docket at Case No. U-11124. Thus, today, interim number portability services in Michigan are not priced in accordance with the requirements of the Act and the FCC's Order. Accordingly, Ameritech Michigan has not fulfilled the requirements of the checklist for this item.

14. Resale

a. **Are Ameritech Michigan's and any of its affiliates' services available in a manner consistent with state and federal law?**

b. **Are there currently any formal disputes related to the pricing of services for resale? If so, identify.**

c. **Are there currently any formal disputes related to the services or the definition of services available for resale by Ameritech Michigan or any of its affiliates?**

MCI RESPONSE

Ameritech Michigan does not offer for resale promotions of less than 90 days. There is no basis under the Act for refusing other carriers the right to purchase such promotions for resale at the prmotional rate. Section 251(c)(4) of the Act, which is applicable to incumbent LECs, requires that "any telecommunications service" must be made available at wholesale rates. At the same time, Section 251(b) (1), which is imposed on all local exchange carriers including incumbent LECs, prohibits the imposition of "unreasonable, or discriminatory conditions or limitations on, the resale of its telecommunications services." There is no basis for restricting the resale of short-term promotions to end users at the promotional rate. The AT&T/Ameritech Agreement does not provide for the resale of short-term promotions. Moreover, Ameritech Michigan has made it clear to MCI during negotiations over interconnection that it will not allow for the resale of short-term promotions unless required to do so by a state commission or the FCC.

Another restriction on resale imposed by Ameritech Michigan involves telecommunications services sold to end user customers via contracts or Individual Case Basis (ICB) tariffs. Under the AT&T/Ameritech Agreement, there are not provisions that would permit CLECs to purchase telecommunications services at contract prices minus avoided cost. Indeed, Ameritech Michigan has represented to MCI that it will not offer its contracts for resale at any price, let alone the discounted price.

The FCC concluded in its First Report and Order that Section 251(c)(4) of the Act "makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings."[13] Thus, there is no basis for Ameritech Michigan to refuse to restrict the ability of any carrier to resell telecommunications services that are offered to end user customers in contracts or customer-specific offerings at the retail rate minus the wholesale discount.

[13] First Report and Order, ¶ 948.

Accordingly, in at least both of these respects, Ameritech Michigan does not fulfill the checklist requirement set forth in Section 271(c)(2)(B)(xiv) of the Act.

CONCLUSION

MCI therefore resepectfully request that the Commission find that Ameritech Michigan has not met and fully implemented the competitive checklist in Section 271(c)(2)(B) of the Act.

Respectfully submitted,

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